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U.S. DISTRICT COURT
2005 APR 13 PM 3:31
TX EASTERN-BEAUMONT
BY jc

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RAYMOND TODD MITCHELL,
Plaintiff,

v.

SOUTHEAST TEXAS ENDOSCOPY
CENTER,
Defendants.

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CIVIL ACTION NO: 1:05-cv-25

MEMORANDUM ORDER OF DISMISSAL
AND ADOPTING THE MAGISTRATE'S REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(A) and the Local Rules for the United States District Court, Eastern District of Texas, Appendix B, the Court referred this matter to United States Magistrate Judge Keith F. Giblin for consideration of and recommended disposition of pretrial matters and proceedings. Judge Giblin recommended that this proceeding be dismissed for failure to prosecute.

On January 14, 2005, Plaintiff Raymond Todd Mitcheel, proceeding *pro se*, filed this civil action in the United States District Court for the Eastern District of Texas, Beaumont Division, based on allegations of civil rights violations. *See Complaint* [Clerk's doc. #1]. On January 24, 2005, Judge Giblin ordered the Clerk of Court to issue summons, and summons were accordingly delivered to the plaintiff for service. *See Order* [Clerk's doc. #3]; *Issuance of Summons* [Clerk's doc. #5].

To date, the record reflects that Plaintiff has not issued service upon the defendant or made any effort to prosecute his claims.

On March 29, 2005, Judge Giblin issued a *Report and Recommendation* on the dismissal of Mr. Mitchell's case [Clerk's doc. #6]. Because Plaintiff had not perfected service or acted on his case for months, he recommended that the Court dismiss this case for failure to prosecute under Federal Rule of Civil Procedure 41(b).

The Plaintiff received the magistrate's report on March 31, 2005. *See Acknowledgment of Receipt* [Clerk's doc. #7]. Plaintiff has not filed objections. The Court therefore agrees with Judge Giblin that this proceeding should be dismissed, *sua sponte*, for lack of prosecution.

Accordingly, the Court **ORDERS** that the Magistrate's *Report and Recommendation on Dismissal* [Clerk's doc. #6] is **ADOPTED**. The Court **ORDERS** that Plaintiff's *Complaint* [Clerk's doc. #1] is **DISMISSED** without prejudice for want of prosecution under Federal Rule of Civil Procedure 41(b). All motions not addressed herein are denied as **MOOT** and this matter shall be closed.

It is so ordered.

SIGNED this 13th day of April, 2005.



HOWELL COBB
UNITED STATES DISTRICT JUDGE